

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CIVIL NO. 1:08CV541

VIRGIL H. SUTHERLAND,)	
)	
Plaintiff,)	
)	
Vs.)	<u>ORDER</u>
)	
MICHAEL J. ASTRUE, Commissioner)	
of Social Security,)	
)	
Defendant.)	
_____)	

THIS MATTER is before the Court on the Plaintiff's motion for summary judgment and the Defendant's motion for judgment on the pleadings.

The Court notes Plaintiff is proceeding *pro se* and dispositive motions have been filed. However, the teachings of the Fourth Circuit in *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), are inapplicable in the context of an appeal from an administrative decision inasmuch as the scope of review is limited to whether the underlying decision was supported by substantial evidence. Plaintiff is advised that the only issues on review are whether the Commissioner applied the correct legal standards and whether the

Commissioner's decision is supported by substantial evidence.

***Richardson v. Perales*, 402 U.S. 389, 390 (1971); *Hayes v. Sullivan*, 907 F.2d 1453, 1456 (4th Cir. 1990).** Review by a federal court is not *de novo*, *Smith v. Schweiker*, 795 F.2d 343, 345 (4th Cir. 1986); rather, inquiry is limited to whether there was "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." ***Richardson*, 402 U.S. at 390.** Even if the undersigned were to find that a preponderance of the evidence weighed against the Commissioner's decision, the Commissioner's decision would have to be affirmed if supported by substantial evidence. ***Hayes*, 907 F.2d at 1456.**

IT IS, THEREFORE, ORDERED that, if the Plaintiff wishes to submit further response as to why the Defendant's motion for judgment on the pleadings should be denied, he must do so on or before July 31, 2009.

Signed: June 30, 2009



Lacy H. Thornburg
United States District Judge

